

**Opinion of the European Economic and Social Committee on ‘The protection of unaccompanied minors in Europe’**

**(own-initiative opinion)**

(2020/C 429/04)

Rapporteur: **Ozlem Yildirim (FR-II)**

Plenary Assembly decision	20.2.2020
Legal basis	Rule 32(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	9.7.2020
Adopted at plenary	18.9.2020
Plenary session No	554
Outcome of vote (for/against/abstentions)	215/1/5

### 1. Recommendations and comments

1.1. The EESC recommends, as it has previously, that the principle of ‘the best interests of the child’ should take precedence over all other national and international law.

1.2. We call on the European Union to develop a coherent and uniform approach to protecting unaccompanied foreign minors in Europe.

1.3. We are seriously concerned about the situation of unaccompanied minors, who are one of the most vulnerable migrant groups and therefore at greater risk of their fundamental rights being infringed.

1.4. The EESC reiterates its request to the Member States to ensure that undocumented migrant children are protected first and foremost as children, under national child protection systems.

1.5. We call on the Member States to prevent any form of violence against migrant children by creating safe, legal and official migration paths.

1.6. Once again <sup>(1)</sup> we would point out that detention of children, regardless of their administrative status, is absolutely prohibited. We condemn this practice in the strongest terms: it violates the International Convention on the Rights of the Child.

1.7. To provide effective protection for unaccompanied minors, the EESC urges Member States to allocate the necessary resources to public services and to provide appropriate facilities, for instance through special training and enhancing the capacities of child protection professionals.

1.8. The Committee urges the European Commission to draw up a Directive on the protection of unaccompanied minors that would serve the best interests of the child.

1.9. The EESC points out that every unaccompanied minor must be supported by a qualified guardian who is assigned as soon as possible and remains in this role until the child comes of age. The guardian must be informed of any decision taken concerning the child and provide support for as long as the child’s case is being processed. The guardian should always be able to act in the best interests of the child and should not have a conflict of interest with the national child protection services.

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<sup>(1)</sup> See EESC opinion on the *Proposal for a Directive of the European Parliament and of the Council on Combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JAI* (OJ C 48, 15.2.2011, p. 138).

1.10. The EESC notes that in accordance with the 'presumption of minority' principle, a young person who presents themselves as a minor must be considered a minor until a final court ruling has been delivered.

1.11. We call on the Member States to evaluate minority based on a body of evidence, consisting principally of the declarations by the person in question, civil status documents presented, interviews with the person conducted by qualified professionals and, where appropriate, verification of the authenticity of civil status documents.

1.12. Given that bone tests are not really reliable, the EESC calls for them to simply be stopped. Methods we know to be approximate should not be employed just because no reliable verification method is available.

1.13. Given the difficulty of covering all the issues and rules relevant to unaccompanied minors in the present opinion, the EESC intends to conduct a series of follow-up studies on specific sub-themes.

## 2. Background

2.1. An unaccompanied foreign minor is defined as 'a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States' <sup>(2)</sup>.

2.2. There are unaccompanied minors in all the EU Member States, but in 2019 60 % of all registered unaccompanied minors were registered in just four countries (Greece, Germany, Belgium and the Netherlands). In 2019, a total of 13 800 asylum-seekers who had sought international protection in the 27 EU Member States were classed as unaccompanied minors. Unaccompanied minors made up 7 % of all asylum-seekers aged under 18 in the EU. Most of these (85 %) were boys. Two thirds of them (9 200) were aged 16 or 17, 22 % (3 100) were aged 14 or 15, and lastly 11 % (1 500) were under 14 <sup>(3)</sup>.

2.3. Migrant children are one of the most vulnerable groups in society. Without parents, which in itself exposes them to great uncertainty and danger, unaccompanied minors have very often had a long and chaotic journey that has been traumatic and entailed violence. They continue to be exposed to multiple dangers and are particularly vulnerable to criminal networks engaged in sexual exploitation and child labour.

2.4. The EESC recommends, as it has previously, that the principle of 'the best interests of the child' should take precedence over all other national and international law <sup>(4)</sup>.

2.5. We believe that the various and complicated situations faced by unaccompanied minors call for multidisciplinary (legal/psychological/medical/social) approaches that are comprehensive and holistic.

2.6. The 1989 United Nations Convention on the Rights of the Child (UNCRC) provides the general framework for child protection in Europe. However, neither this instrument, nor the European Convention on Human Rights (1950), nor the European Convention on the Exercise of Children's Rights (1996) lay down specific provisions applying directly to unaccompanied children.

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<sup>(2)</sup> Article 2 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (OJ L 337, 20.12.2011, p. 9).

<sup>(3)</sup> <https://ec.europa.eu/eurostat/documents/2995521/10774042/3-28042020-AP-FR.pdf/a5951a9e-fe8f-ef1a-64f1-cdedfc925eb2>

<sup>(4)</sup> See the United Nations Convention on the Rights of the Child, the European Convention on the Exercise of Children's Rights, and the EESC opinion of 15 October 2014 on *International protection of unaccompanied minors* (OJ C 12, 15.1.2015, p. 69).

2.7. It was not until 26 June 1997 that the Council of Europe adopted the first legal instrument specifically addressing the issue of unaccompanied minors, but this is a non-binding resolution. Although there are EU legal acts which mention unaccompanied minors, e.g. the Return Directive or Directive 2003/9/EC <sup>(5)</sup>, no specific EU-level legislation has been drawn up.

2.8. Consequently, in the absence of a precise legal framework, the Member States face considerable difficulties when it comes to managing the problem of unaccompanied minors in a concerted and coherent way. Thus the situation of unaccompanied minors varies widely between Member States in terms of the laws governing their treatment and procedures to which they are subject (e.g. to determine age, or on guardians or rights).

2.9. Thus the legal framework for unaccompanied minors must be strengthened by the Member States, and the EESC urges the European Commission to draw up a Directive on the protection of unaccompanied minors that would serve the best interests of the child. This is particularly clear given the deplorable situation of many unaccompanied minors, which children's rights organisations across Europe have decried.

### 3. General comments

3.1. The EESC is seriously concerned about the situation of unaccompanied minors, who are one of the most vulnerable migrant groups and therefore more at risk of their freedoms and fundamental rights being infringed.

3.2. Under the UNCRC, countries must treat undocumented children in the same way as all children, without making any distinction <sup>(6)</sup>. But in practice the EESC notes that there is a tension between national legal provisions governing immigration control and child protection laws. The EESC reiterates its request to the Member States to ensure that undocumented migrant children are protected first and foremost as children, under national child protection systems <sup>(7)</sup>.

3.3. The EESC urges the Member States to prevent all forms of violence against migrant children by creating safe, legal and official migration paths, including flexible, rapid and efficient procedures, through family reunification, increasing quotas for resettlement of migrants, or granting humanitarian visas, which will strengthen guarantees for children and their family members.

3.4. The EESC calls on the Member States to put in place specific and effective procedures to regularise such children's residence status and to seek a permanent solution for unaccompanied minors that guarantees their best interests.

3.5. The Committee points out that detention of children is absolutely prohibited, regardless of their administrative status. It strongly condemns this practice, which is an outright breach of the UNCRC (Article 3). The EESC notes <sup>(8)</sup> that detention can have a very serious impact on a child's health and development, regardless of the duration. Detention is always contrary to the best interests of the child <sup>(9)</sup>.

3.6. The EESC calls on the Member States to pass national legislation prohibiting the detention of unaccompanied children and promoting the development of alternatives that reflect their particular vulnerability, such as placing them with foster families or in supervised accommodation where they live independently.

3.7. The EESC notes the importance of upholding a child's right to be involved in decisions that concern them.

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<sup>(5)</sup> Directive 2008/115/EC of 16 December 2008 (OJ L 348, 24.12.2008, p. 98) states: 'Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child'. Council Directive 2003/9/EC of 27 January 2003 (OJ L 31, 6.2.2003, p. 18) defines key terms, including the term 'unaccompanied minor'.

<sup>(6)</sup> Article 2, UNCRC.

<sup>(7)</sup> EESC opinion on *International protection of unaccompanied minors* (OJ C 12, 15.1.2015, p. 69).

<sup>(8)</sup> See *A study of immigration detention practices and the use of alternatives to immigration detention of children*, PACE Committee on Migration, Refugees and Displaced Persons, 2017.

<sup>(9)</sup> The European Network of Ombudspersons for Children (ENOC), Position Statement on *Ending detention of children for immigration purposes*, adopted by the 23rd ENOC, 27 September 2019.

3.8. The EESC recommends that Member States provide legal safeguards to ensure that unaccompanied minors have access to international protection procedures and guarantee that information appropriate to their age is provided. A good way of doing this would be to set up specialised asylum units to help migrant children and transmit age-appropriate information to them in their mother tongue, incorporating gender considerations and the cross-cultural dimension into national processes.

3.9. To protect unaccompanied minors from all forms of exploitation, the EESC asks all Member States to grant children who have been subject to exploitation and violence the status of victims of human trafficking and to issue them a residence permit. The EESC also believes that decisions on unaccompanied minors must be treated as urgent.

3.10. Unaccompanied minors should never be subject to criminal proceedings for reasons solely related to their immigration status or where their involvement in criminal activity is the result of exploitation.

3.11. To provide effective protection for unaccompanied minors, the EESC urges Member States and the European Union to allocate the necessary resources to public services and to provide appropriate facilities, for instance through special training and enhancing the capacities of child protection officials. This training should be set up at European level.

3.12. Protection of unaccompanied minors does not stop at Europe's borders. The EESC would encourage the EU and the Member States to prioritise the needs and rights of this group in their foreign policy instruments and external action, especially when concluding cooperation programmes or agreements.

3.13. The EESC points out that every unaccompanied minor must be supported by a qualified guardian who is assigned as soon as possible and remains in this role until the child comes of age. The guardian must be informed of any decision taken concerning the child and provide support throughout the entire process. They should always be able to act in the best interests of the child and should not have a conflict of interest with the national child protection services.

3.14. As the EESC has already pointed out, although EU law recognises the importance of legal guardianship, it does not define the duties of a legal guardian. The legal guardian should be an accredited representative who has experience with minors and a knowledge of national law on the rights of foreign nationals and child protection legislation. The guardian should have the authority to represent the child in all decision-making processes <sup>(10)</sup>, subject to the child's consent <sup>(11)</sup>. The Belgian procedure for appointing guardians could serve as a model <sup>(12)</sup>.

3.15. The EESC points out that unaccompanied children need not just legal assistance but also access to social protection and to reception facilities and temporary accommodation of an acceptable standard. Reception arrangements must be adapted to the child's vulnerability, with the involvement of specialist youth professionals, the option of a physical or psychological health check, and access to healthcare.

3.16. Unaccompanied minors must also have access to education with due regard for their preferences and, where applicable, those of their guardian. Erasmus and Erasmus+ could also facilitate that access for unaccompanied minors and people who arrived as unaccompanied minors but have now reached the age of majority.

3.17. The EESC stresses the importance of every child being provided with information on their rights that is adapted to their age, based on the UN Convention, so as to ensure that unaccompanied children without adequate guardianship can request protection.

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<sup>(10)</sup> See *La protection des mineurs migrants non accompagnés en Europe* [Protecting the rights of unaccompanied migrant children], Nisrine Eba Nguema, 2015; <https://doi.org/10.4000/revdh.1147>

<sup>(11)</sup> 1996 Hague Convention.

<sup>(12)</sup> Belgium has set up a fast-track system for appointing legal guardians. All unaccompanied minors are assigned a guardian, which may be an individual (following a selection procedure and training of the person concerned), who will support them through all the procedures: see [https://justice.belgium.be/fr/themes\\_et\\_dossiers/enfants\\_et\\_jeunes/mineurs\\_etrangers\\_non\\_accompagne](https://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/mineurs_etrangers_non_accompagne). As the legal representative responsible for monitoring the general well-being of the minor, the guardian is the person on whom the child can rely to ensure they develop the necessary skills to be an active member of society: [https://justice.belgium.be/fr/themes\\_et\\_dossiers/enfants\\_et\\_jeunes/mineurs\\_etrangers\\_non\\_accompagne/tuteur/missions\\_du\\_tuteur](https://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/mineurs_etrangers_non_accompagne/tuteur/missions_du_tuteur)

#### 4. Specific comments

4.1. Article 1 of the UNCRC defines a child as any person below the age of 18. The particular legal status of children means that they enjoy a set of rights that must be guaranteed by the States Parties to the convention. The right to protection is dependent on minority status, which poses the practical question in all the Member States of determining the migrant's age.

4.2. The EESC notes that under the 'presumption of minority' principle, a young person who presents themselves as a minor must be considered a minor until a final court ruling has been delivered on the matter. They must therefore be offered immediate protection in decent conditions that are compatible with their particular vulnerability.

4.3. The Committee also points out that third-country civil status documents submitted by the young person to prove that they are a minor must be presumed to be valid and must be the first pieces of evidence to be considered when deciding whether or not the person is a minor. Only a formal challenge to the authenticity of the civil status documents submitted should allow that presumption of validity to be overturned.

4.4. The EESC points out that under Article 8 of the UNCRC, 'Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity' <sup>(13)</sup>.

4.5. In principle there should only be a procedure to assess a migrant's age if they do not have official administrative documents proving their age or in case of serious doubt <sup>(14)</sup>.

4.6. The EESC again notes that the Member States use different methods for evaluating the age of unaccompanied minors, and that none of those methods has been proven reliable.

4.7. The EESC asks the Member States to assess age based on a body of evidence, starting with declarations by the person concerned, civil status documents presented, interviews with the person, and if appropriate verifying the authenticity of the civil status documents. The Committee emphasises that a medical opinion on the person's age should not be given except in cases of continuing doubt and as a last resort.

4.8. The EESC believes that in view of their particular vulnerability, unaccompanied minors should always be given the benefit of the doubt.

4.9. The EESC notes that the scientific reliability of bone maturity tests, used in many countries, is highly contested by international experts and organisations <sup>(15)</sup>. This practice is also criticised for breaching children's right to privacy and for its potential health risks (radiation exposure) and the wide margin of error.

4.10. Given that such tests are not really reliable, the EESC calls on the Member States to just stop them. We do not think that methods known to be approximate should be employed just because no reliable verification method is available.

4.11. The EESC urges the Member States to protect unaccompanied minors by giving them the time and proper means to prove their identity, for example through diplomatic cooperation (subject to the child's agreement and provided this does not put them in danger) or by providing *prima facie* evidence such as psychosocial assessments, to confirm that the person is a minor.

4.12. As a last resort, in the absence of documentary evidence and in the case of serious doubt about the person's age, we would suggest that age be evaluated on the basis of a multidisciplinary approach led by independent professionals with appropriate expertise and knowledge about the person's cultural and ethnic origins. The procedures used in England could serve as a model.

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<sup>(13)</sup> See also Article 24 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and Article 7 UNCRC.

<sup>(14)</sup> Both the UN High Commissioner for Human Rights and the Parliamentary Assembly of the Council of Europe have stated (in July 2010 and on 15 April 2011, respectively) that an age assessment should only be carried out in cases of doubt.

<sup>(15)</sup> The scientific reliability of such tests has been questioned for example by the European Parliament (in a resolution of 12 September) and in recommendations of the Committee on the Rights of the Child of 12 June 2009. Both the Belgian Register of Physicians and the French Medical Association have challenged the reliability of these tests (the former in an opinion of 20 February 2010). The French *Defender of Rights* (constitutional rights ombudsman) has condemned the use of bone maturity tests (26 February 2016). See also the report of the Belgian *Plateforme Mineurs en Exil* [Unaccompanied Minors Platform] on 'L'estimation de l'âge des MENA en question: problématique, analyse et recommandations' [Estimating the age of unaccompanied minors: problems, analysis and recommendations], September 2017.

4.13. The EESC calls on the Member States to set up a European supervisory commission to devise a standard holistic age assessment procedure for all the Member States and to oversee age assessment protocols and practices.

4.14. Such procedures are unlikely to be effective unless their conclusions are substantiated and it is possible to quickly lodge an appeal against them with suspensory effect.

#### 5. Comments with specific reference to COVID-19

5.1. The COVID-19 pandemic will certainly increase the risks faced by unaccompanied minors, whose state of health is often already fragile. They may be unable to comply with the lockdown measures, have inadequate access to food, hygiene facilities and water, lack appropriate information about personal protective measures and precautions they should take, and find it difficult to access healthcare.

5.2. The EESC calls on all the European institutions to do whatever is necessary to ensure that the rights of all children guaranteed under international treaties are upheld during the COVID-19 health emergency and that they are protected and their dignity respected during the economic crisis that is looming.

5.3. The EESC welcomes the recent relocation of unaccompanied minors from Greece to Luxembourg, Portugal, France, Finland and Germany, and urges the Member States to prioritise and continue moving minors living in unacceptable conditions, including in Greece, as a matter of urgency<sup>(16)</sup>.

Brussels, 18 September 2020.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(16)</sup> See <https://www.unhcr.org/news/press/2020/4/5e9707ed4/un-agencies-welcome-first-relocation-unaccompanied-children-greece.html> and <https://www.eepa.be/?p=3856>